IN THE

# SUPREME COURT OF THE UNITED STATES.

JOE A. MAY and LEE MAY,
Petitioners,
vs.
JOHN M. PARKER COMPANY, INC.,
Respondent.
No. .....

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the Circuit Court of Appeals for the Fifth Circuit rendered June 27, 1942, is found at pages 225 to 231 of the Record and is reported in 128 Federal Reporter (2nd Edition) 1020.

II.

Jurisdiction is invoked under the **Judicial Code, Section 240; Section 347, Title 28, U. S. C. A.**

III.

The exercise by this Court of its discretion in issuing a writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit is prayed for upon the basis of the reasons set out under the Revised Rules of this Court, effective Feb-

ruary 27, 1939, Rule 28, Paragraph 5, because the decision rendered by the Circuit Court of Appeals 1) decides an important question not heretofore passed upon involving the regulatory power of the Commodity Credit Corporation, a question of Federal law which has not been, but should be, settled by this Court; 2) decides a federal question in conflict with the applicable decisions of this Court; 3) decides a question of local law in a way probably in conflict with applicable local decisions, in that the contract relied on as constituting a sale is not sufficient for that purpose and is in violation of the Statute of Frauds of the State of Mississippi, **Section 3347, Mississippi Code 1930,** set out in the Appendix.

IV.

The statement of the case is set forth in the petition, which is referred to.

V.

**ASSIGNMENT OF ERRORS.**

The Circuit Court of Appeals for the Fifth Circuit erred in holding:

1.

That recognition in respondent of title or right in the cotton or right of action against petitioners in respect thereto, before July 31, 1940, and particularly after July 31, 1940, was not in conflict with public policy and the applicable decisions of the Supreme Court of the United States.

2.

That there was a sale and not merely an option to purchase the cotton, such decision being, it is thought, in conflict with the applicable decisions of the Supreme Court of the State of Mississippi.

## VI.

## ARGUMENT.

The Department of Agriculture and the Commodity Credit Corporation had power to adopt such regulations and impose such conditions with respect to loans and dealings with commodities as were reasonably necessary to effectuate the purposes and accomplish the results sought by the Agricultural Adjustment Act of 1938.

**Sections 101, 302, 389, Agricultural Adjustment Act of 1938;**
**Honolulu Rapid Transit and Land Company v. Hawaii,** 211 U. S. 282;
**United States v. Grimaud,** 220 U. S. 506;
**Pittsburgh Plate Glass Company v. National Labor Relations Board,** 313 U. S. 146;
**Cook v. Donner,** 145 Kan. 674, 110 A. L. R. 244.

Respondent, in dealing with the Commodity Credit Corporation and pledged cotton, did so with notice of such power and subject to its exercise because:

> Contracts made after a law is in force are made subject to it and impose only such obligations and create only such property as the law permits.
>
> **Abilene National Bank v. Dolley,** 228 U. S. 1, 57 L. ed. 707.

> A law existing affecting its performance becomes a part of the contract.
>
> **Southern Surety Co. v. Oklahoma,** 241 U. S. 582, 60 L. ed. 1187.

Private contract rights must yield to the public welfare where the latter is appropriately declared and defined and the two conflict, **nor does it matter that legislation appropriate to a legitimate end has the effect of modifying or even abrogating existing contracts,** since contracts are to be regarded as having been made subject to future exercise of the constitutional power of

the State, and the reservation of essential attributes of sovereign power is read into contracts.

**Home Building & Loan Association v. Blaisdell,** 290 U. S. 398, 78 L. ed. 413.

Respondent had notice specifically of the limitations upon its power to contract with respect to the pledged cotton, or acquire property rights therein because the loan contracts, Sec. 5 (R. 39), specifically set forth that, upon the sale of the pledged cotton or in dealing with proceeds of sale, any surplus, after payment of debts and charges, should be paid to the producer or his personal representative without recognition of any assignment to third parties, and specifically required those having liens at the time a loan was negotiated to waive the liens, with the right on the part of the Commodity Credit Corporation to redeliver the cotton or warehouse receipts to the producer on payment of the loan and to pay to the producer the proceeds of the loan, the proceeds of the sale of cotton or any insurance proceeds (R. 37).

(See testimony of G. E. Rathell, Director of the Cotton Division of the Commodity Credit Corporation, R. 44-47);

(See statement of J. B. Hutson, President of the Commodity Credit Corporation, quoted in Appendix, R. 98-99, 102-105).

By the regulatory terms of the loan contract, the Commodity Credit Corporation intended to prevent and prohibit the vesting of any indefeasible title in an assignee of producer-borrowers, because the purpose of the legislation was for producer-borrowers to have the benefit of any advance in price, and the same reason that would deny recognition of any claim of prior lienholders would likewise prevent recognition of any indefeasible right in those acquiring claims subsequent to the loan.

Assuming that any title or property had vested in respondent, the purpose and intent of the requirements of regulatory Cotton Form R was to divest its title, if it did not or could not comply with the conditions stated between the date of notice of the requirement, April 3, 1940, and the date when the requirement went into effect, July 31, 1940.

The purpose of the Agricultural Adjustment Act of 1938, Sections 2, 101, 302, 341, 344, 385, 389, was to promote the general welfare by promoting the financial prosperity of cooperating producers of the designated agricultural products. This was to be done by the regulation of interstate and foreign commerce to the extent necessary to provide an adequate and balanced flow of such commodities in interstate commerce and to prevent dumping, this, in turn, to be accomplished by storage of reserve supplies, loans, marketing quotas and assisting producers to obtain parity prices and consumers adequate and steady supplies at fair prices.

A regulation denying the recognition of any title in respondent and other assignees of producers was reasonably necessary to accomplish the purposes sought:

> Because permitting the assignments of pledged cotton would have the same economic effect as though producers had dumped their crops on the market and would defeat the purpose of the loans, which were to relieve the producers of the necessity of selling, and, by lessening the available supply of commodities on the market, to raise a depressed price to parity.
>
> Because it would enable cotton speculators, through the use of so-called "purchases," "delivery orders," or "options," to speculate on the cotton market at the expense of the Government and through a governmental agency.
>
> Because it would enable speculators in depressed times to purchase "delivery orders" and "options" for small sums, with the result that any rise in the

price of crops would go to such speculators and not to the producers, and thus defeat the purpose of the Congress to enhance the prosperity of the co-operating producers.

The position that the provisions of "Cotton Form R" could be held valid as between the Commodity Credit Corporation and the producer, but could have no effect as between assignee and producer, as held by the Circuit Court of Appeals, would defeat the objects sought, because it would give rise to the defeat of results sought, as hereinbefore stated.

Such being the effects of any recognition of indefeasible title in any assignee of producer-borrowers, such recognition would be contrary to public policy as tending to defeat the accomplishment of the purposes of the Agricultural Adjustment Act of 1938.

**Hammerschmidt v. United States**, 265 U. S. 182, 68 L. ed. 968;
**Cook v. Donner**, 145 Kan. 674, 110 A. L. R. 244;
**Stoger v. Junker**, 118 Atl. 440, 14 N. J. Mis. 913;
**Jessewich v. Abbene**, 277 N. Y. S. 599;
**Cook v. Marks et al.**, 4 N. W. (2d) 465.

## CONCLUSION.

It is respectfully submitted that a limitation both upon the right of the producer to assign pledged cotton and upon the right of the third party to take the assignment is necessary to carry out the purpose of the Agricultural Adjustment Act of 1938. The purpose was to promote the general welfare of the producers. The power to regulate by denying assignability or to require defeasance after fair notice is necessary. The producer-borrowers and third parties who make loans or deals with the commodities pledged necessarily do so subject to regulatory power.

Respondent had, from April 3, 1940, to July 31, 1940, to redeem the cotton, if it saw fit, and after July 31, 1940, its right to redeem was dependent upon its compliance with the regulation adopted by the Commodity Credit Corporation on April 3, 1940. This respondent did not do. To permit it to ignore the regulation and thereby gain the advance in the price of the cotton would be squarely opposed to the regulation of April 3, 1940, adopted for the purpose of accomplishing the objectives of the act. It cannot complain of any unfairness. Its present situation is due entirely to its own actions.

It is respectfully submitted that the issuance of certiorari should be ordered.

Respectfully submitted,

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Attorneys for Petitioners.